HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

ELECTRIC STREET RAILWAYS — ADDITIONAL BURDEN. — The case of *Detroit City Ry.* v. *Mills*,[1] decided by the Supreme Court of Michigan, and very recently affirmed by the case of *Dean* v. *Ann Arbor St. Ry. Co.*,[2] almost convinces one of the perfect elasticity of the common law. But in spite of the court's appeal to the progressive tendency of the times, common experience and observation arouse a feeling of dissent from the proposition that "the use of a street by an electric railroad, with poles and overhead wires, is not an additional servitude for which abutting owners may demand compensation."

It seems well established that at the present time an ordinary steam railroad imposes a new burden,[3] and that a horse railroad does not;[4] and the distinction, which is one of degree, turns on the different effects produced on the streets occupied by the railroads, and on the beneficial use of abutting property. In allying the legal position of the electric railroad to that of the horse railroad, the Michigan court seem to have made assumptions and statements of fact which will not bear close examination. Grant, J., tells us that electric cars are not more noisy, do not cause greater obstruction or hindrance, impose no greater burden, except by their poles, than horse-cars; and that they do not occupy more space than horse-cars with the horses that draw them. From these pro-

[1] 48 N. W. Rep. 1007.

[2] 53 N. W. Rep. 396.

[3] Mahon *v.* Ry. Co., 24 N. Y. 658; Kucheman *v.* Ry. Co., 46 Ia. 366; Chamberlain *v.* Ry. Co., 41 N. J. Eq. 43; Terre Haute, &c., Ry. Co. *v.* Scott, 74 Ind. 29; Indianapolis Ry. Co. *v.* Hartley, 67 Ill. 439; Stetson *v.* Ry. Co., 75 Ill. 74; Imlay *v.* Ry. Co., 26 Conn. 249; Adams *v.* Ry. Co., 18 Minn. 260 (see also 22 Minn. 149); Cox *v.* Ry. Co., 48 Ind. 178; Carson *v.* Ry. Co., 35 Cal. 325 (see also 41 Cal. 256); Blerch *v.* Ry. Co., 43 Wis. 183; Laurence Ry. Co. *v.* Williams, 35 Ohio St. 168; Williams *v.* New York Central Ry. Co., 16 N. Y. 97; etc. See also cases and authorities cited in Taggart *v.* Ry. Co., 19 Atl. Rep. 326.

[4] Elliott *v.* Fairhaven Ry. Co., 32 Conn. 579; A. G. *v.* Met. Ry. Co., 125 Mass. 515; 2 Dillon on Mun. Corp., 868, and cases cited in notes; Shea *v.* Ry. Co., 44 Cal. 414; Citizens' Coach Co. *v.* Camden H. R. Co., 33 N. J. Eq. 267.

positions we must, with all deference, dissent. The noise and jar of the ordinary electric cars, often joined in trains, the speed with which they run, the danger of driving along and upon the tracks, or even across them, the risk of injury or death from contact with broken wires, the unsightliness of the poles and cars and cross-wires and guard-wires and trolley-wires, are all matters of common knowledge.

That telegraph and telephone poles are an additional servitude is fairly well settled,[1] the cases to the contrary, such as *Pierce* v. *Drew*,[2] in Massachusetts, being based on highly artificial analogies between the ancient and modern use of highways for purposes of communication. To avoid this class of decisions, the Michigan court would say, with the Supreme Court of Rhode Island,[3] that telegraph and telephone wires are only very indirectly used to facilitate the use of streets for travel and transportation, whereas the poles and various wires of the electric railroad are distinctly ancillary to the use of the streets as such. This distinction is, as Judge Dillon remarks, "so fine as to be almost impalpable."[4]

It is said that the streets of a city may be used for any purpose which is a necessary public one, and the abutting owner will not be entitled to new compensation, in the absence of a statute giving it. As it stands, this statement can scarcely be maintained. Granting that the abutting owner dedicates to the public the whole beneficial use of part of his land for the purposes of a street, his property rights of light, air, and access free from danger to his remaining land still subsist. Surely the need of the public for steam railroads is much greater than its need for electric railroads; yet steam railroad corporations would not be allowed to run their trains on public streets merely as a new method of using an old easement, and if they would lay their tracks across lands not belonging to them, they must obtain the right to do so by purchase or condemnation, into which consequential damages enter as an element. The need of the public is to be considered when the right to take the property is under consideration, and not when the courts have to decide whether compensation shall be allowed.

If the public needs a new method of transportation, the public can and should pay for private property rights destroyed or impaired in establishing that new method of transportation.

THE SEVENTEENTH SECTION OF THE STATUTE OF FRAUDS. — Iowa has the seventeenth section of the Statute of Frauds, but with the limitation that it shall not apply "where the article of personal property sold is not, at the time of the contract, owned by the vendor, and ready for delivery, but labor, skill, or money are necessarily to be expended in producing or procuring the same." Code, § 3665. The construction of this article came squarely before the Supreme Court of Iowa for the first time in the case of *Mighell* v. *Dougherty*, 53 N. W. Rep. 402. Here the defendant orally contracted to deliver to the plaintiff, in a marketable condition, the oats then standing unthreshed in the defendant's field. For delivery in such condition, the expenditure of labor, skill, and money was necessary; but was it necessary, within the meaning of the exception, for "producing or procuring and making ready for delivery"?

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[1] See 2 Dillon on Mun. Corp., § 698 *a*, and cases cited.
[2] 136 Mass. 75.
[3] Taggart *v.* Ry. Co. (R. I.), 19 Atl. Rep. 326.
[4] 2 Dillon on Mun. Corp., p. 893, *n.*